

Committee on Resources

Witness Testimony

TESTIMONY PRESENTED BY
BILL DEVENY
STATE DIRECTOR, DISTRICT V
IDAHO FARM BUREAU FEDERATION
TO THE
HOUSE COMMITTEE ON RESOURCES
REGARDING
THE AMERICAN HERITAGE RIVERS INITIATIVE
September 24, 1997

Mr. Chairman, members of the committee and visitors, thank you for the opportunity to present comments before this committee. My name is Bill DeVeney. This written testimony is submitted in support of H.R. 1842 to terminate further development and implementation of the American Heritage Rivers Initiative. I am a rancher from Riggins which is in Central Idaho. I am speaking in behalf of the Idaho Farm Bureau Federation representing 47,000 member families in Idaho and also in behalf of myself.

Water is the lifeblood of Idaho, so the way it is managed and used is of concern to all of us in Idaho. Water is not only essential for all domestic uses, but has transformed the arid southern part of the state into productive, irrigated crop ground producing grain, onions, beans, potatoes, sugar beets, hay, mint, hops, small seeds, fruit, and numerous other crops on 3.4 million acres. The value of agricultural products produced including cattle is \$35 to \$45 billion. Water provides transportation from the Port of Lewiston to the Pacific Ocean at Portland, Oregon, for 2 million tons of cargo valued at \$1.5 to \$2.0 billion. Hydro-power generation of electricity provides an average of 70 percent of the electricity used in Idaho. Recreation, which is the third largest industry in the state, depends heavily on water resources including lakes, rivers and streams for a variety of uses such as rafting, boating, and fishing. Continued use of Idaho water is essential to the continued well being and quality of life for residents of this state.

One concern I have with the American Heritage Rivers Initiative is that it circumvents the right of states to manage and control water which is clearly a right of each individual state. The Idaho Constitution (as approved by Congress when Idaho entered the Union) expressly states: "The use of all waters...(is) subject to the regulations and control of the state...". Additionally, Idaho code 42-101 states: "All the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose." The initiative would clearly be in direct violation of state law and the state constitution.

Another concern I have with the American Heritage Rivers Initiative is that nowhere in the Constitution of the United States is there authority for the federal government to become involved in the issue of water. The Constitution enumerates the powers granted to the federal government and reserves all others to the states or to individuals.

Furthermore, there is no authority for the federal government to expend funds for the American Heritage

Rivers Initiative. The following is quoted from *IMPRIMIS*, "Our Unconstitutional Congress," by Stephen Moore.

"The enumerated powers of the federal government to spend money are defined in the Constitution under Article 1, Section 8. These powers include the right to 'establish Post Offices and post roads; raise and support Armies; provide and maintain a Navy; declare War...' and to conduct a few other activities related mostly to national defense. No matter how long one searches, it is impossible to find in the Constitution and language that authorized at least 90 percent of the civilian programs that Congress crams into the federal budget today."

There certainly is nothing that allows the executive branch to initiate spending programs. My understanding has always been that spending originates with the House of Representatives.

The American Heritage Rivers Initiative is duplication of effort between other federal, state, and local agencies: for example, the Corps of Engineers, Rural and Economic Community Development, Rural Development Councils, Natural Resource Conservation Service, and Soil Conservation Districts to mention a few. There also are other rural initiative programs in effect and there is no reason to think that another federal program can accomplish what these other programs are not doing, nor can any other federal program cause existing federal programs to be more efficient or effective. In reality, probably just the opposite is true.

A serious anomaly is created by the initiative when "nongovernmental organizations" are included to nominate rivers, and to "coordinate delivery of federal services" and "...restore, protect, and revitalize American Heritage Rivers that run through their communities." These nongovernmental organizations are the same organizations that do not respect any of the heritage of the American West. The heritage, at least in the West, relies first on the trappers (which have become virtually extinct), then miners, later grazers followed by farmers, next loggers, and recently recreationists. These nongovernmental organizations are the very ones that are trying to send the rest of us, grazers, farmers, loggers, and recreationists, the way of the trappers- into extinction. The nongovernmental organizations might tolerate a few recreationists who are hardy souls and want brave a wilderness, but even that will require agency permission.

The American Heritage Rivers Initiative is in conflict with other federal laws such as the Clean Water Act and does not comply with existing laws such as NEPA which requires an extensive environmental assessment for federal actions or at least a finding of no significant impact. The initiative attempts to avoid the intent of Congress when it passed the Congressional Review of Agency Rulemaking Act by claiming this is not a rule. It also avoids, in fact violates, the Administrative Procedures Act.

The American Heritage Rivers Initiative is circumventing the authority of Congress and vesting authority in yet another bureaucracy. It introduces another layer of bureaucracy which we do not need. Agencies have become the "fourth" arm of government and this is detrimental. We need less bureaucracy, not more.

From personal experience about two weeks before this hearing I was contacted by two federal employees wanting to come on my private property to make a stream side survey to see what kind of fish were in a very small stream running through my property and what kind of habitat there was. When questioned why they wanted to make the survey, the employees would not tell me why they wanted to know, what they would do with the information, or by what authority they were collecting this information. From experience I am pretty sure that whatever they did would probably not be for my benefit and would probably be detrimental to my interests and well being and in the long run to the general public as well. This is simply

an example of the intrusiveness of government that this new initiative would create more of.

The "river communities" that would be created by the American Heritage Rivers Initiative would have no jurisdictional basis and could, in fact, cross jurisdictional lines such as those between cities and counties and thus create hard feelings or confrontations. The results could be chaotic and entirely unpredictable situations.

When the prospect of grant money is added to a legislative proposal, local units of government have a hard time saying no. Several years ago I was asked to testify at a meeting of the Idaho Association of Counties concerning some of the heritage legislation that was being proposed by the late Morris Udall. Earlier versions of heritage legislation had been rejected, but when the counties were promised a share of the money which most certainly would have been "pork", many county commissioners had a hard time saying no. They were willing to accept the money regardless of the consequences even though there might have been serious bad side effects from accepting this money. Fortunately there were enough commissioners present who could see the down side to the proposed legislation that the Association of Counties voted to reject the proposal. Since the "river communities" are not legally established units of government, the temptation to accept grant money might even be greater and put the private property owners within the area in jeopardy because of the obligations that would come associated with the grant money. There always are some obligations, even though hidden initially. Grant money is a "carrot and stick" approach. The promise of grant money is the carrot. Any agency is made up of human beings, and they can be very unfriendly, then the stick is wielded. In an initiative such as this one there are myriad opportunities for favoritism. This initiative is particularly susceptible to these failings, and to creating special favors for selected people or groups of people.

Another concern I have is for the position that would be created of "river navigator". This would be yet one more unelected official who would have untold powers over the rights, lives, and livelihoods of citizens of the area involved yet individuals impacted would have no recourse for unfavorable actions or decisions. Local control and decision making will be further diluted. For instance in Idaho, this could interfere with the Snake River Basin Adjudication of water rights that is taking place for the Snake River System. This is a legal proceeding.

Once a river is designated, the designation becomes permanent and there are no provisions to reverse this designation or for individuals or groups of individuals to opt out of the program. The definition of those who can propose a designation would allow people from entirely out of the area to control local issues. The American Heritage Rivers Initiative is yet another tool for use by environmental extremists to stop the wise use of our lands. This is an issue about the control of resources, Separation of Powers, State Sovereignty, private property rights, and freedom from unnecessary and harmful federal intrusion.

In my view the American Heritage Rivers Initiative is contrary to every thing I have ever learned about our form of government. We are a nation of laws. The legislative branch is to create the laws, the executive branch is to implement and to enforce the laws, and the judiciary branch is to interpret the laws- not to make the laws. The American Heritage Rivers Initiative is contrary to each of those tenets.

This country is founded on several important principles not the least of which is the right to own private property. One of the primary reasons many, if not most, immigrants came to this country was the freedom to own and control land outright. This initiative is just another chink in taking away private property rights and a step toward federal land use control. I know of no instances where the government does a better job in the long run of managing property than private property owners themselves.

We need less government control, not more, so I encourage you to do whatever is in your power to curtail the American Heritage Rivers Initiative. Withholding funding as proposed in H.R. 1842 is certainly a step in the right direction.

We do not want another federal designation. We do not want a greater federal presence. We do not want enhanced federal control over our waters. And we do not want the government to come up with yet another way to spend taxpayer dollars.

Thank you for the opportunity to provide these comments.

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